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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,722	02/06/2004	Kevin Johnson	22160-RA	8303
30184	7590	06/05/2007		
MYERS & KAPLAN INTELLECTUAL PROPERTY LAW, L.L.C. CUMBERLAND CENTER II 3100 CUMBERLAND BLVD, SUITE 1400 ATLANTA, GA 30339			EXAMINER MCKINLEY, CHRISTOPHER BRIAN	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 06/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/773,722

Applicant(s)

JOHNSON, KEVIN

Examiner

Christopher B. McKinley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/5/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Litto (6,220,311). Litto disclose the limitations of the claims including a container (fig. 1j) comprising first fillable member (12) with first fill aperture (16), second fillable member (28) with second fillable aperture (22), both having necks (24,18) and vessels (portions extending therefrom), first fillable member being both solid and transparent (col. 21, line 18), shared wall (wall dividing neck portions), second fillable member being of an animal design (snake or eel), contoured surface (rounded bottom) or a smooth surface (48), lid (66, 60).

3. Claims 11-14 and 16-20 rejected under 35 U.S.C. 102(b) as being anticipated by Herman (5,437,381). Herman discloses the limitations of the claims including a container comprising first fillable member (2), second, 3-dimnesionally shaped fillable member (12) disposed within said first fillable member and visible from the exterior of first said fillable member, each container having a neck member and vessel member (fig. 5, 12 & 2), second fillable

Art Unit: 3781

member is carried substantially within said vessel member of said first fillable member (fig. 5), fill aperture (2 & 12 comprise respective upper neck region that ultimately define said fill aperture), second fillable member shares wall with said first fillable member (bottom wall), second fillable member has the design of an animal (eel or snake), contoured surface (curved bottom portion of second fillable member), second fillable member is substantially smooth (container 12 is clearly smooth) and a lid (22,8). It should be noted that each fillable member is *selectively accessible* either by design or through manipulation of the user, i.e. the second, inner container starts "to flow only after said first compartment has been substantially emptied of said first liquid." (col. 1, line 66).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herman ('381) in view of Maines (5,921,440). Herman excludes what Maines teaches, an outer container being transparent so that an inner container can be seen from an exterior of said outer container. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have

Art Unit: 3781

modified Herman with an outer container made of transparent material in order to make possible clear viewing of the inner contents of the bottle.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments filed 8/29/2006 have been fully considered but they are not persuasive. Applicant contends that the Herman ('381) does not anticipate independent claims 1 and 11 because the two invention do not dispense their contents in the same manner however, there is no limitation in the claim to distinguish the two from each other on the grounds of varying dispensing design. In particular claim 11 has the limitation "selectively accessible" however this limitation does not serve to distinguish over the prior art of record because Herman, by design, dispenses contents of the containers one after the other (outer then inner respectively; col. 1, line 66) and therefore provides both a selective and accessible means of dispensing liquid from the two containers simply by design.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone

Art Unit: 3781


number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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